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Facsimile Cover Sheet

To:

Company: DOJ - Terrorism & Violent Crime

Phone:

Fax: 202-514-8714

From:

Company: CIA

Phone:

Fax:

Date: 06/21/96

Pages including this

cover page: 4

Comments: We received this today - we do not plan on responding unless you tell us otherwise.

Regards

APPROVED FOR
RELEASE DATE:
30-May-2009

20 JUN REC'D

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96-04391

June 14, 1996

Central Intelligence Agency
Jeffrey Smith, Esquire
Washington, D.C. 20505

CONFIDENTIAL

Re: *United States of America v. Timothy James McVeigh and Terry Nichols* (Oklahoma City bombing case; Destruction of Alfred P. Murrah Building, April 19, 1995) United States District Court for the District of Colorado, Cause No. 96-CR-68-M. IMPORTANT: THIS LETTER CONCERNS OBLIGATIONS YOU MAY HAVE TO PRODUCE EVIDENCE TO THE DEFENDANT PURSUANT TO RULE 16 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, THE *BRADY* DECISION, AND AN ORDER OF THE UNITED STATES DISTRICT COURT DATED APRIL 29, 1996. THIS LETTER SHOULD BE READ EXTREMELY CAREFULLY.

Dear Mr. Smith:

I am the principal defense attorney for Timothy James McVeigh. I was appointed by the United States District Court for the Western Judicial District of Oklahoma on May 8, 1995. Mr. McVeigh is one of two named defendants in an indictment returned by the United States Grand Jury for the Western Judicial District of Oklahoma on August 10, 1995. The indictment alleges, among other things, the use of a weapon of mass destruction, an explosive device, as well as several acts of individual homicide.

Following the return of the indictment, Mr. McVeigh was arraigned and entered a plea of not guilty. On Defendant's motion, the case was transferred to the United States District Court for the District of Colorado. The trial judge is the Honorable Richard P. Matsch, Chief Judge of the United States District Court for the District of Colorado.

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Because of complaints by the Defendant concerning the government's obligation to provide discovery material, Defendant has filed several motions including a Motion for the Production of Exculpatory Evidence pursuant to the United States Supreme Court's decision in what is commonly known as the "*Brady* decision."¹ The Defendant filed a second motion pursuant to the *Brady* decision and its progeny as well as Rule 16 of the Federal Rules of Criminal Procedure, for disclosure of certain national intelligence data in the possession of the federal government and its agencies.

On April 29, 1996, United States District Judge Richard Matsch ruled on the Defendant's motion by directing the prosecution to recall its duty to provide *Brady* information, setting forth certain guidelines, and other matters. A copy of Judge Matsch's Order is attached hereto. Judge Matsch's Order requires the prosecuting attorneys to make certain responses to the Defendant, certain inquiries of various agencies whose identity we have given them, and emphasizes to them that in doubtful cases concerning exculpatory evidence, the decision whether to disclose is to be resolved in favor of disclosure to the Defendant. Specifically, we have advised the prosecution, in a letter attached hereto, that the government cannot withhold production of the evidence that we have specifically denominated as "exculpatory" or which is "material to the preparation of the defense" simply because it disagrees with that characterization. Rather, the prosecution must produce that evidence (or information) but may seek a protective order.

Because of our ongoing discovery disputes with the government and frankly our skepticism concerning whether it will discharge its duty under the law, and given the public importance of this case, we are taking the liberty of sending to you, and to all other affected agencies, a copy of our request to the prosecution and a copy of Judge Matsch's Order. Since this Order was entered more than six (6) weeks ago, nothing has been produced by the government pursuant to it. Shortly, we will file a Motion to Compel.

Multiple state and federal criminal convictions have been overturned and/or death sentences vacated because the government or the prosecution or, in some instances, the state, refused, failed or neglected to give exculpatory information though specifically requested to do so by the Defendant. A multiplicity of excuses have been offered in the past as to why such information was not furnished including (1) failure of the Defendant to make a specific request, (2) failure of the agency to know what was requested, and (3) failure of the prosecutors to request the information, or having requested it, failing to turn it over to the defense.

In order to avoid any such claims of lack of knowledge, we are sending to you, and to the general counsel of your agency, a full copy of Judge Matsch's Order and our discovery requests insofar as it relates to national intelligence data. You should be aware that we have pending a separate motion for exculpatory evidence which includes items other than national

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

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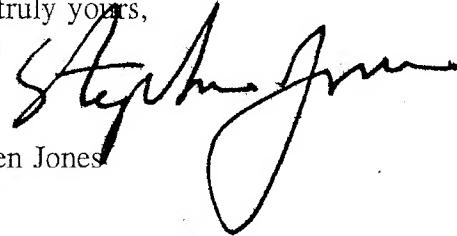
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intelligence information, and it is entirely possible that your agency may have some information that falls under the other motion. In other words, what you are receiving today is not our exclusive request for or list of exculpatory material.

If this letter is addressed to a state agency, or to a municipal agency, there is no hesitancy or problem in having your attorney contact us. If, however, your agency is a federal government agency, you may wish to speak with the prosecutors before speaking with us.

The only purpose of this letter is to ensure full compliance with Judge Matsch's Order and the obligation of the prosecutors.

Very truly yours,



Stephen Jones

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Enclosures: 1. Copy of Judge Matsch's Order dated April 29, 1996; and
2. Copy of letter to Joseph Hartzler dated May 8, 1996.